UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

July 6 (MLB)

ACADIA INSURANCE COMPANY)
 as Subrogee of St. Paul Street, LLC)
 1 Acadia Commons)
 Westbrook, ME 04908)
     Plaintiff)
)
 v.)
)
 NER CONSTRUCTION MGMT., INC.)
 867 Woburn Street)
 Wilmington, MA 01887)
     Defendant)
)
	CIVIL ACTION NO. 04-12557 WGY

ANSWER AND COUNTERCLAIM

Now come the defendant in the above referenced matter and hereby answer the complaint and files counterclaims as follows:

PARTIES

1.   The Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 1.

2.   The Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 2.

3.   The Defendant admits that it is a Massachusetts Corporation with a principal place of business located at 867 Woburn Street in Wilmington, Massachusetts and at all times material to the complaint was engaged in the business of construction management. The Defendant denies the rest of the allegations contained in Paragraph 3.

JURISDICTION AND VENUE

4.   The Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 4.

5.   Admitted.

6.   Admitted.

7.   Denied.

8.   Denied.

9.   Denied.

10.   The Defendant admits that on or about January 31, 2004 a fire erupted in the basement of one of the condominiums on the Property. The Defendant admits that the General Contractor was engaged in construction at the property at that time. No employees of the Defendant were on site or engaged in construction at the time of the fire.

11.   Denied.

12.   Denied.

13.   The Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 13.

14.   The Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 14.

COUNT I: NEGLIGENCE

15.   The defendant repeats its answers to the above allegations to the extent that a response to this allegation is required.

16.   Denied as to every allegation in paragraph 16.

17.   Denied.

COUNT II: BREACH OF WARRANTIES

18.   The defendant repeats its answers to the above allegations to the extent that a response to this allegation is required.

18(sic). Denied.

19.   Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The claims arising out of the subject matter of the transactions and occurrences alleged are barred by the statute of frauds.

SECOND AFFIRMATIVE DEFENSE

The claims arising out of the subject matter of the transactions and occurrences alleged are barred by the plaintiff's failure to mitigate damages.

THIRD AFFIRMATIVE DEFENSE

The claims arising out of the subject matter of the transactions and occurrences alleged are barred because the negligence of the plaintiff is greater than the negligence of the defendant.

FOURTH AFFIRMATIVE DEFENSE

The claims arising out of the subject matter of the transactions and occurrences alleged are barred by an absence of legal responsibility on the part of the defendant.

FIFTH AFFIRMATIVE DEFENSE

The claims arising out of the subject matter of the transactions and occurrences alleged were the result of the acts or omissions of a third party for whose conduct the defendant is not legally responsible.

SIXTH AFFIRMATIVE DEFENSE

The claims arising out of the subject matter of the transactions and occurrences alleged are barred by an absence of privity of contract between plaintiff and defendant.
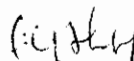
SEVENTH AFFIRMATIVE DEFENSE

The Complaint is barred by the applicable Statute of Limitations.

JURY DEMAND

The defendant hereby requests a trial by jury.

> Respectfully submitted for the defendant,
> by its attorney,
>
> _Conrad J. Bletzer, Jr._
> Conrad J. Bletzer, Jr.
> Bletzer & Bletzer, P.C.

300 Market Street
Brighton, MA 02135
(617) 254-8900
BBO # 045760

Dated: July 5, 2005

z:NER/Acadia/Answer-Counterclaim-Aff Defs.lwp